

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRESH & EASY NEIGHBORHOOD
MARKET

and

Cases: 31-CA-077074
31-CA-080734

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION

**COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO
RESPONDENT'S MOTION TO DISMISS REVISED CONSOLIDATED
COMPLAINT**

Pursuant to § 102.24 of the Rules and Regulations of the National Labor Relations Board ("the Board Rules and Regulations"), as amended, Counsel for the Acting General Counsel hereby respectfully opposes the Motion to Dismiss Revised Consolidated Complaint ("the Motion to Dismiss") filed by Fresh & Easy Neighborhood Market, Inc.¹ ("the Respondent") on November 7, 2012.

On October 23, 2012, the Acting Regional Director for Region 31 of the National Labor Relations Board issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing ("the Revised Consolidated Complaint")² based upon unfair labor practice charges in cases 31-CA-077074 and 31-CA-080734, filed by United Food and Commercial Workers International Union. On November 6, 2012, Respondent filed an

¹ This is the correct legal name of the Respondent.

² The Consolidated Complaint incorrectly names the Respondent as Fresh & Easy Neighborhood Market. To the extent that the Consolidated Complaint does not correctly reflect the name of the Respondent, Counsel for the General Counsel will move to amend the Consolidated Complaint. This amendment will be minor in nature.

Answer to the Revised Consolidated Complaint (“the Answer”). On November 7, 2012, Respondent filed the Motion to Dismiss.

I. BACKGROUND OF CASES 31-CA-077074 and 31-CA-080734 AND PARTIAL DISMISSAL

A. Investigation of Cases 31-CA-077074 and 31-CA-080734 and the Respondent’s Repeated Refusals to Provide a Position Statement and Evidence

On March 15, 2012,³ the charging party United Food and Commercial Workers International Union (“the Union”) filed an unfair labor practice charge against TESCO, plc, New Tesco House (“Tesco”) and the Respondent in Case No. 31-CA-077074 (“the Initial Charge”). The Initial Charge alleges that Tesco and the Respondent “have maintained unlawful rules in their ‘Code of Business Conduct’ which interfered with rights guaranteed by Section 7 of the Act.”

On April 19, the Region sent a letter, via e-mail, to the Respondent seeking information in Case No. 31-CA-077074. The letter asserted that the Union’s evidence suggested a *prima facie* case that the Respondent, a wholly-owned subsidiary of Tesco, maintained unlawful rules in its Code of Business Conduct (“the Tesco Code”), which is available from Tesco’s website. The Region’s April 19, e-mail and attached letter are attached hereto as Exhibit 1.

On April 26, the Respondent sent an e-mail to the Region in response to the Region’s April 19 letter. The Respondent asserted that based on its understanding of the Initial Charge, it relates only to a policy of Tesco, a company headquartered in the United

³ All dates in this Opposition to Respondent’s Motion to Dismiss (“the Opposition”) occurred in 2012, unless otherwise noted.

Kingdom that does not operate in the United States. The Respondent contended that based on its understanding of the April 19 letter, no evidence had been produced by the Union that the Tesco Code applies outside of Tesco or the United Kingdom.

The Respondent maintained that the information requested by the Region in the April 19 letter was extensive and imposed an unnecessary burden on the Respondent. The Respondent asserted further that the allegations contained in the Initial Charge fail to come close to establishing any possible violation of the National Labor Relations Act (“the Act”). Consequently, the Respondent refused to provide any evidence or argument in support of its position.⁴ The Respondent’s April 26, e-mail is attached hereto as Exhibit 2, at pages 2-3.

On May 1, the Region sent an e-mail to the Respondent in response to the Respondent’s April 26 e-mail. The Region pointed out that the Respondent maintained its own Code of Business Conduct (“the Fresh & Easy Code”), which could be accessed on the Respondent’s website. The Region explained further that the Fresh & Easy Code contained three provisions with language identical to the language of three provisions in the Tesco Code that were alleged to be unlawful, which were described in the Region’s April 19 letter to the Respondent. For ease of reference, the Region quoted the three relevant provisions from the Fresh & Easy Code in the May 1 e-mail.

Despite the Respondent’s prior refusal to provide a position statement and evidence in this case, the Region offered the Respondent another opportunity to do so.

⁴ Additionally, in contemporaneous communications between the Region and Respondent’s counsel, the Respondent’s counsel made numerous declarations that it was only representing the Respondent in this case and was in no way serving as a representative of Tesco.

Accordingly, the Region extended the Respondent's deadline to provide a position statement and evidence from April 26 to May 4. The Region's May 1, e-mail is attached hereto as Exhibit 2, at pages 1-2.

On May 3, at 4:50 pm, the Respondent sent an e-mail to the Region in response to the Region's May 1 e-mail. The Respondent claimed that it no longer understood what issues the Region sought to address. The Respondent maintained that it understood the Initial Charge as alleging that the Tesco Code somehow constitutes a violation by the Respondent. The Respondent then asserted that in its May 1 e-mail, the Region suggested that the alleged violation is based on the Fresh & Easy Code. Furthermore, the Respondent contended that these allegations are mutually exclusive and that both policies cannot apply. The Respondent claimed that due to the absence of a clear charge, there was nothing to which the Respondent could respond. The Respondent's May 3, e-mail is attached hereto as Exhibit 2, at page 1.

On May 3, at 4:58 pm, the Region sent an e-mail to the Respondent in reply to the Respondent's May 3, 4:50 pm e-mail. The Region explained that the Initial Charge names both Tesco and the Respondent as employers. The Region explained further that the Initial Charge alleges, "within the last six months, the above-named *employers* have maintained unlawful rules in the 'Code of Business Conduct' which interfered with rights guaranteed by Section 7 of the Act" (emphasis in original). Again, the Region requested that the Respondent provide a response so the investigation may be informed by the benefit of the Respondent's input. Nevertheless, the Respondent failed to provide any

response to the Region's repeated requests to provide a position statement and evidence. The Region's May 3, e-mail is attached hereto as Exhibit 3.

On May 9, the Union filed a ULP charge against the Respondent in Case No. 31-CA-080734 ("the Second Charge"). The basis of the Second Charge is identical to the basis of the Initial Charge, i.e. "...the above-name employers have maintained unlawful rules in their 'Code of Business Conduct' which interfered with rights guaranteed by Section 7 of the Act." However, the Second Charge names only the Respondent as the employer and does not include Tesco.

B. The Region's Partial Dismissal of the Initial Charge with Respect to Tesco and Proper Service Upon Respondent Counsel

On July 25, the Acting Regional Director issued a dismissal letter partially dismissing the Initial Charge with respect to Tesco because of the Board's lack of jurisdiction over Tesco ("the Partial Dismissal"). All other portions of the Initial Charge remain outstanding. The Partial Dismissal was also sent via regular mail to Respondent's counsel of record. The Partial Dismissal is attached hereto as Exhibit 4. Respondent's counsel of record is listed in the "cc" section of the Partial Dismissal. (Exhibit 4 at page 3.)

C. The Union's Appeal of the Partial Dismissal of the Initial Charge and the Acting General Counsel's Appeal Denial

On August 1, the Region received via electronic filing a copy of a letter sent to the Office of Appeals from the Union appealing the Partial Dismissal ("the Appeal"). The Region was also listed in the "cc" section of the Appeal. No other names were listed in

the “cc” section of the Appeal. Thus, it appears that the Union did not serve a copy of the Appeal upon the Respondent. The Appeal is attached hereto as Exhibit 5.

On August 28, the Region received a copy of a letter sent to the Union by the Office of Appeals on behalf of the Acting General Counsel denying the Appeal (“the Appeal Denial”). The Regional Director was listed in the “cc” section of the Appeal Denial. However, the Office of Appeals neglected to include Respondent’s counsel of record in the “cc” section of the Appeal Denial. Thus, it appears that the Office of Appeals did not serve a copy of the Appeal Denial upon the Respondent. The Appeal Denial is attached hereto as Exhibit 6.

D. The Union’s Motion for Reconsideration of the Appeal Denial and the Acting General Counsel’s Denial of the Motion for Reconsideration

On September 4, the Region received via electronic filing a copy of a letter sent to the Office of Appeals from the Union moving it to reconsider the denial of its appeal (“the Motion for Reconsideration”). The Office of Appeals was the only addressee listed on the Motion for Reconsideration and there was no “cc” section indicated. Thus, it appears that the Union did not serve a copy of the Motion for Reconsideration upon the Respondent. The Motion for Reconsideration is attached hereto as Exhibit 7.

On September 21, the Region received a copy of a letter sent to the Union by the Office of Appeals on behalf of the Acting General Counsel denying the Motion for Reconsideration (“the Reconsideration Denial”). The Regional Director was listed in the “cc” section of the Reconsideration Denial. However, the Office of Appeals neglected to include Respondent’s counsel of record in the “cc” section of the Reconsideration Denial.

Thus, it appears that the Office of Appeals did not serve a copy of the Reconsideration Denial upon the Respondent. The Reconsideration Denial is attached hereto as Exhibit 8.

On October 4, Respondent counsel contacted the Region and requested copies of the Partial Dismissal, Appeal Denial, and Reconsideration Denial. The following day, October 5, by e-mail, the Region sent copies of the Partial Dismissal and Appeal Denial to Respondent counsel, as requested. The Region's October 5, e-mail to Respondent and attachments are attached hereto as Exhibit 9.

II. SETTLEMENT AGREEMENT ATTEMPT AND THE REGION'S SIGNIFICANT CLARIFICATION OF THE ULP ALLEGATIONS

On October 1, the Region sent a pre-complaint informal settlement agreement ("the Settlement Agreement") to the Respondent. The Region informed the Respondent that, if it agreed to the Settlement Agreement, it should provide the Region with a signed and initialed copy of the Settlement Agreement no later than October 8.

On October 9, the Region contacted the Respondent to inquire as to its position on the Settlement Agreement. The Respondent explained that it had reviewed the Settlement Agreement and expected to provide a response shortly. The Region explained to the Respondent that if the Region did not receive an executed Settlement Agreement or a counter proposal from the Respondent by the end of the week, a complaint would issue.

On October 15, the Respondent sent an e-mail to the Region in response to the Settlement Agreement. The Respondent claimed that due to the lack of clarity with respect to the allegations in the Initial Charge and the Second Charge (collectively, "the Charges"), the Respondent had no basis on which to respond to the Region. The

Respondent repeated its assertion that the allegations, which were based upon both the Tesco Code and the Fresh & Easy Code, were mutually exclusive and could not apply concurrently. Again, the Respondent provided no support or explanation for its assertion that the Codes were mutually exclusive and could not apply concurrently. Additionally, in its October 15, e-mail, the Respondent argued that although the Fresh & Easy Code does not violate the Act, in an effort to eliminate any confusion, the Respondent had rescinded the Employee Information Policy and replaced it with a new policy that the Respondent asserts cannot be interpreted to interfere with employees' rights under the Act. The Respondent's October 15, e-mail is attached hereto as Exhibit 10.

Later that same day, October 15, the Region responded by e-mail to the Respondent. The Region made it clear that it is only concerned with the Fresh & Easy Code, not the Tesco Code or the Respondent's application of the Tesco Code. The Region further explained that the allegations in the Charges concern only the Fresh & Easy Code, not the Respondent's application of the Tesco Code. Additionally, the Region made it clear that the fact that the Respondent has recently replaced the Employee Information Policy does not fully remedy the violation alleged in the Complaint. The Region's October 15, e-mail is attached hereto as Exhibit 11.

The Region then requested the Respondent send the Region an executed Settlement Agreement no later than October 16. The Respondent failed to provide the Region with an executed Settlement Agreement, a counter proposal, or any other response to this request.

III. ISSUANCE OF THE CONSOLIDATED COMPLAINT AND PROPER SERVICE UPON RESPONDENT COUNSEL

On October 22, the Acting Regional Director issued an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing based upon the Charges (“the Original Consolidated Complaint”). The Region served the complaint on Respondent and Respondent counsel via certified mail as evidenced by the affidavit of service. The cover letter, the Original Consolidated Complaint, and the corresponding affidavit of service are attached hereto as Exhibit 12.

On October 23, the Acting Regional Director sent a letter via regular mail to Respondent counsel requesting that he disregard the Original Consolidated Complaint and Notice of Hearing issued on October 22 due to various formatting errors. A copy of the Revised Consolidated Complaint issued on October 23 was attached to the letter. The Region’s affidavit of service indicates that Respondent counsel was provided service of the Revised Consolidated Complaint via regular mail on October 23. The cover letter, the Revised Consolidated Complaint, and the corresponding affidavit of service are attached hereto as Exhibit 13.

IV. ARGUMENT

A. The Motion to Dismiss Should Be Denied Because the Original Consolidated Complaint and the Revised Consolidated Complaint are Both Properly Pled

Section 102.15(b) of the Board's Rules and Regulations requires that a complaint contain “a clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and places of such acts

and the names of respondent's agents or other representatives by whom committed.” In applying Section 102.15 of the Board’s Rules and Regulations, “the Board and the courts have consistently found that an unfair labor practice complaint is not judged by the strict standards applicable to certain pleadings in other, different legal contexts.” *In re Artesia Ready Mix Concrete, Inc.*, 339 NLRB 1224, 1226 (2003). In fact,

the sole function of the complaint is to advise the respondent of the charges constituting unfair labor practices as defined in the Act, that he may have due notice and a full opportunity for hearing thereon. The Act does not require the particularity of pleading of an indictment or information, nor the elements of a cause like a declaration at law or a bill in equity. All that is requisite in a valid complaint before the Board is that there be a plain statement of the things claimed to constitute an unfair labor practice that respondent may be put upon his defense.

Despite Respondent’s requests for even more specificity and detail than already provided in the Revised Consolidated Complaint (“the Complaint”), Paragraphs 5 and 6 have been pled properly under Section 102.15. With respect to Complaint Paragraphs 5 through 6, the language of the Complaint plainly notifies Respondent of the conduct that is claimed to be an unfair labor practice: the Respondent’s maintenance of the Employee Information Policy.

Moreover, although the Respondent decries the language of the Complaint because it fails to identify the theory the Region intends to argue at trial, the Respondent fails to cite any case which stands for the proposition that the Complaint must notify the Respondent of the General Counsel’s theory. In fact, the General Counsel is not required to plead evidence or the theory of the case in the complaint. *North American Rockwell Corp. v. NLRB*, 389 F.2d 866, 871 (10th Cir. 1968); *Boilermakers Local 363 (Fluor*

Corp.), 123 NLRB 1877, 1913 (1959). In a similar case, an employer's argument that a complaint alleging a refusal to bargain in good faith was deficient because it did not identify the specific bargaining proposals relied upon by the General Counsel, was rejected by the Court. *Public Service Co. of Oklahoma v. NLRB*, 318 F.3d 1173, 1182 (10th Cir. 2003)(due process is not violated where "it is clear that the respondent understood the issue and was afforded a full opportunity to justify its actions" and that "the charges in the complaint [were] not 'vague and unfathomable.'")

In the instant case, the fact that the Respondent rescinded the Employee Information Policy and replaced it with a new policy before the Complaint was even issued clearly reflects that Respondent understands the Complaint allegations. Moreover, the Region's significant efforts to provide even more clarification than was necessary and its repeated requests for a position statement and evidence from the Respondent undoubtedly shows that the Respondent was afforded due process. In light of the above, the Complaint clearly has put Respondent on notice of the conduct the General Counsel claims to constitute an unfair labor practice.

B. The Motion to Dismiss Should Be Denied Because a Complaint May Allege Alternative Theories of Violations of the Act

A complaint may allege alternative legal theories of violations of the Act. See e.g. *Carpenters Local Union No. 2361(Adams Insulation Co., Inc.)*, 248 NLRB 313; *Dreis & Krump Manufacturing, Inc.*, 221 NLRB 309 (1975). The Board regularly considers alternative legal theories pled by the General Counsel.

In the Motion to Dismiss, the Respondent argues that the Complaint alleges two mutually exclusive theories of a violation. The Respondent contends, inaccurately, that the Initial Charge alleges that the Respondent's application of the Tesco Code violates the Act, while the Second Charge alleges that the Respondent's own Fresh & Easy Code violates the Act. However, even a cursory review of the Charges shows that the allegation language forming the basis of each Charge is exactly the same: the "employers have maintained unlawful rules in their 'Code of Business Conduct' which interfered with rights guaranteed by Section 7 of the Act." And to the extent that the Respondent could attribute any confusion to the use of the word "employers" in the Charges, both the Region's October 15, e-mail to Respondent and its Complaint have made it abundantly clear that the allegations in the Charges concern *only* the Respondent's Fresh & Easy Code, not the Respondent's application of the Tesco Code.

In light of the permissibility of alternative theories and the fact that the Region made it clear that the allegations of the Charges concerned only one theory of violation of the Act, Counsel for the Acting General Counsel has properly pled the allegations pertaining to Respondent's maintenance of an unlawful rule.

C. The Motion to Dismiss Should Be Denied Because the Region Properly Served the Partial Dismissal Upon the Respondent

Section 102.113(d) of the Board Rules and Regulations prescribes that documents such as dismissal letters may be properly served by regular mail. Additionally, Section 102.113(e) states that in the case of service by regular mail, any sufficient proof may be relied upon to establish service.

Although the Respondent claims that the Region did not properly serve the Partial Dismissal upon the Respondent's counsel of record, the Region's proof demonstrates otherwise. As discussed above, the Respondent's counsel of record was listed in the "cc" section of the Partial Dismissal issued on July 25. (Exhibit 4 at page 3.)

The established practice of the Region is that each person or entity listed in the "cc" section of partial dismissal letters is sent a copy of the letter via regular mail. The Respondent has produced no evidence which suggests that the Region has deviated from this established practice. Therefore, the fact that Respondent counsel is listed in the "cc" section of the Partial Dismissal is sufficient to establish proper service.

D. The Motion to Dismiss Should Be Denied Because the Region Properly Served the Original Consolidated Complaint Upon the Respondent

Section 102.113(a) of the Board Rules and Regulations requires that complaints and accompanying notices of hearing be served upon all parties either by certified mail or a number of other reliable methods. Although the Respondent claims that the Region did not properly serve the Original Consolidated Complaint upon the Respondent's counsel of record, again, the evidence demonstrates otherwise. As discussed above, the Original Consolidated Complaint, which included the complaint and accompanying notice of hearing, was sent to Respondent's counsel of record by certified mail. The Region's affidavit of service is evidence of this fact. (Exhibit 12.) The Respondent has produced no evidence which casts doubt on the reliability or accuracy of the Region's affidavit of service. Therefore, the Region's affidavit of service is sufficient to establish proper service.

While it is true that formatting errors present in the Original Consolidated Complaint prompted the Acting Regional Director to send a Revised Consolidated Complaint to the Respondent, the formatting errors present in the Original Consolidated Complaint were merely cosmetic and in no way affected the content or the legibility of the Original Consolidated Complaint. Thus, the combined purpose of Section 102.15(b) and Section 102.113(a) of the Board Rules and Regulations – that a complaint which clearly puts the Respondent on notice of the conduct the General Counsel claims to constitute an unfair labor practice be served upon the Respondent by a trusted and reliable method – has been sufficiently carried out by the Region.

E. The Motion to Dismiss Should Be Denied Because the Respondent Was Not Prejudiced By the Appeal Denial Not Being Served Upon the Respondent

Section 102.19(c) of the Board Rules and Regulations requires that in the case of an appeal to the General Counsel from refusal to issue or reissue, the General Counsel's decision with regard to the appeal shall be served on all parties. However, with regard to motions for reconsideration, Section 102.19(c) does not require the General Counsel to inform any party other than the moving party of its decision.

The Office of Appeals neglected to serve the Appeal Denial upon the Respondent. Nevertheless, the Respondent was not prejudiced by this seemingly inadvertent failure. The Partial Dismissal applied only to Tesco and not the Respondent. The Respondent's counsel made it exhaustively clear to the Region that Respondent's counsel in no way serves as a representative of Tesco in this case. There was no evidence or information

required of the Respondent that was dispositive to the Acting General Counsel's decision to deny the Union's Appeal.

To the extent that the Respondent argues in the Motion to Dismiss that it was prejudiced by a failure of service, the Respondent's claim of prejudice relates only to service of the Complaint. But as it has been discussed above, the Region properly served the Original Consolidated Complaint upon the Respondent.

F. The Motion to Dismiss Should Be Denied Because the Allegation that the Respondent Maintained an Unlawful Rule is a Claim Upon Which Relief Can Be Granted

An employer violates Section 8(a)(1) through the mere maintenance of a work rule if the rule "would reasonably tend to chill employees in the exercise of their Section 7 rights." See *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), *enforced mem.*, 203 F.3d 52 (D.C. Cir. 1999). The Complaint claims that the Respondent's mere maintenance of the Employee Information Policy violates Section 8(a)(1) of the Act.

In addition, Respondent's argument that no relief can be granted by the Board because the Respondent has already "rescinded its version of the policy at issue in Case No. 31-CA-080734," is unavailing as it ignores the other remedies available to the Region, and sought by the General Counsel in this case, that not only must the Respondent rescind its alleged unlawful policy, but also notify all of its employees, that this has been done both by posting the notice at its facility and electronically, and posting the remedial notice on its internet site. Thus, despite the Respondent's rescission of its alleged unlawful rule, there is still relief that may be granted to the Region through this proceeding.

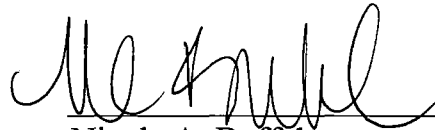
To the extent that the Employer makes a legal argument that Respondent's rescission of its alleged unlawful rule is a legal defense to the Complaint in that the Respondent cured its alleged unfair labor practice under *Passavant Memorial Hospital*, 237 NLRB 138 (1978), Respondent's argument is a question of fact, and, therefore properly heard at a fact finding hearing before an Administrative Law Judge.

In light of the foregoing, it is clear that the Complaint states a claim upon which relief can be granted.

CONCLUSION

For the foregoing reasons, Counsel for the Acting General Counsel opposes Respondent's Motion to Dismiss and respectfully requests that the Motion to Dismiss be denied.

Dated at Los Angeles, California, this 14th day of December, 2012.

A handwritten signature in black ink, appearing to read 'Nicole A. Buffalano', written over a horizontal line.

Nicole A. Buffalano
Counsel for the Acting General Counsel

Buffalano, Nicole

From: Rubin, John A.
Sent: Thursday, April 19, 2012 12:51 PM
To: 'joe.turzi@dlapiper.com'
Subject: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704
Attachments: EAJA.doc

John Rubin

Field Attorney

National Labor Relations Board

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United States Government

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December 13, 2012

VIA EMAIL

EMAIL: joe.turzi@dlapiper.com

Joe Turzi
DLA Piper LLP
500 8th Street NW
Washington, DC 20004

Re: *Tesco, plc New Tesco House/Fresh &
Easy Neighborhood Market*
Cases: 31-CA-77074

Dear Mr. Turzi:

As you know, the above-referenced charge filed by United Food and Commercial Workers International Union ("Charging Party" or the "Union") has been assigned to me for investigation. Based on our conversation, I understand that you represent only Fresh and Easy Neighborhood Market in this matter, and not Tesco, plc New Tesco House. The purpose of this letter is to afford Fresh and Easy Neighborhood Market ("Employer" or "Fresh and Easy") an opportunity to fully cooperate with the Region in the investigation of the above-captioned charge. "Full cooperation" includes 1) making individuals available to me so that I can take sworn affidavits, 2) presenting copies of documentation pertinent to the allegations, 3) providing a detailed position statement, including citations to relevant Board law, and 4) providing anything additional, which you believe will assist the Region in making a decision on the charges.

The Charging Party's evidence suggests a *prima facie* case.

1. **Allegation:** The Union alleges that the Employer has maintained unlawful rules in its Code of Business Conduct, which is available from Tesco's website at http://www.tescopl.com/media/126222/code_of_business_conduct.pdf. The Union asserts that Tesco is a multi-national British Corporation which operates a wholly-owned subsidiary known as Fresh and Easy Neighborhood Market which operates in the United States. The Charging Party asserts the following provisions of the Code of Business Conduct are unlawful:
 - a. (Page 17): With regard to the IT rule, the Union alleges that it is unlawfully overbroad because it prohibits use of "company resources," including "telephone, email and internet access for personal activities."

- b. (Page 18): With regard to the rule that states “keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained,” the Union asserts that to the extent that this rule states that “employee information” must be held “secure” and used “only for purposes for it was obtained,” it is unlawfully overbroad.
- c. (Page 21): With regard to the Unacceptable behavior rule, insofar as it prohibits spreading “malicious rumors,” is alleged to be unlawfully overbroad.

Requested Evidence:

Please address the following items and provide evidence regarding them, *in addition to all other evidence you wish to present in connection with the above allegation.*

1. A copy of the Code of Business Conduct.
2. Whether the Code of Business Conduct has been disseminated, maintained, distributed, accessed and/or enforced among any Fresh and Easy Neighborhood Market employees, and/or whether any Fresh and Easy Neighborhood employees have ever been directed to the Code of Business Conduct.
3. The relationship between Tesco and Fresh and Easy Neighborhood Market, including regarding control of labor relations.
4. Whether the Code of Business Conduct applies to employees of Fresh and Easy Neighborhood Market.

Board Affidavits: In connection with the foregoing, I am requesting, by this letter, to take an affidavit from any witnesses that you might wish to make available and who have knowledge of the allegations raised by the above-noted charges. **Please contact me immediately to schedule your witnesses.** With respect to any witnesses that you wish to submit for affidavits, please provide me with their names and the times that they are available to testify no later than **Monday, April 23, 2012.** If you choose not to fully cooperate by making witnesses available to me for affidavits, you should provide me with sworn declarations establishing any facts you assert in your statement of position.

Date for Submitting Evidence: In order to resolve this matter as expeditiously as possible, you must present all of your evidence in this matter by **Thursday, April 26, 2012.** If I have not received all your evidence by that time, a recommendation as to the merits of the case may be made in this matter based upon the evidence in the files.

Please contact me by telephone at (310) 235-7632 or e-mail at john.rubin@nlrb.gov if you have further questions, concerns or wish to discuss these matters further. Thank you for your anticipated cooperation.

Very truly yours,

/s/ John Rubin

John Rubin
Field Attorney

From: Turzi, Joseph
To: Rubin, John A.
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704
Date: Thursday, May 03, 2012 4:50:59 PM

Dear Mr. Rubin:

Thank you for this additional information.

Unfortunately, I no longer understand what issues it is that you seek to address. The charge, as I understand it, alleges that Tesco's policy somehow constitutes a violation by Fresh & Easy. In the e-mail below, you appear to suggest that the violation is based on Fresh & Easy's policy, even though there is no charge to that affect. Clearly, the two allegations are mutually exclusive, both policies cannot apply.

Absent a clear charge, I fear that there is nothing to which my client can respond. In fact, asking my client to address these mutually exclusive theories appears to raise some serious and fundamental due process issues.

Finally, it appears to me that the charging party was aware of the Fresh & Easy policy, but nonetheless alleged that the Tesco policy applied. I am curious as to why the original charge does not constitute a willful, false statement subject to sanctions under 18 U.S.C. Section 1001.

Best regards,

Joe Turzi

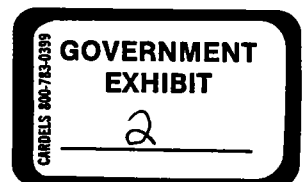
From: Rubin, John A. [mailto:John.Rubin@nlrb.gov]
Sent: Tuesday, May 01, 2012 8:49 PM
To: Turzi, Joseph
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Mr. Turzi:

Thanks for your response. I'd like to point out that Fresh and Easy maintains its own Code of Conduct, which can be accessed at the following link:

freshandeasy.com/Content/pdfs/CodeConduct_082010.pdf. This Code of Conduct contains identical provisions as that which I described in my April 19 letter to you. I have quoted them below, using Fresh and Easy's Code of Conduct page references. As you will note, the language of these provisions is identical to that found in Tesco's Code of Business Conduct.

Malicious Rumors (Page 19)
Spread malicious rumors or use



company resources to transmit communications that might be considered derogatory, defamatory, harassing, pornographic or otherwise offensive

Employee Information (Page 16)

Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained

Company Resources (Page 15)

Misuse company resources, including telephone, email and Internet access, for personal activities

Although you have declined to provide a position statement and evidence in this case, I would like to offer you another opportunity to do so, in order that this investigation be informed by the benefit of your input.

Accordingly, please provide a position statement and evidence requested in my April 19 letter by the close of business Friday, May 4.

I would also like you to explain why the language in Fresh and Easy's Code of Conduct in the above respects is identical to that of Tesco's Code of Conduct. Is this a coincidence?

Please also address the issue of whether and to what extent Fresh and Easy and Tesco share common control of labor relations and human resources.

From: Turzi, Joseph [mailto:Joe.Turzi@dlapiper.com]

Sent: Thursday, April 26, 2012 3:44 PM

To: Rubin, John A.

Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Dear Mr. Rubin:

I have reviewed your letter relating to the above referenced charge.

As I understand the UFCW's charge, the charge relates to a policy of Tesco PLC, a UK

company that does not operate in the United States. As best I can tell from your letter, no evidence has been produced by the UFCW that the policy applies outside of Tesco or the UK.

Although the UFCW has not even alleged that the Tesco policy applies to my client, Fresh & Easy, you have requested extensive information from my client regarding various issues. Quite frankly, I fail to see the purpose of imposing such a burden on my client. Even the allegations fail to come close to establishing any possible violation of the Act.

Given that no violation or even potential violation of the Act has been alleged, I do not see the need to provide any evidence or argument.

Best Regards,

Joe Turzi

From: Rubin, John A. [mailto:John.Rubin@nrlrb.gov]
Sent: Thursday, April 19, 2012 3:51 PM
To: Turzi, Joseph
Subject: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

John Rubin

Field Attorney

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Main Line: (310) 235-7351

Direct Dial: (310) 235-7632

Fax: (310) 235-7420, attn: John Rubin

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The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please reply to the sender and destroy all copies of the message. To contact us directly, send to postmaster@dlapiper.com. Thank you.

From: Rubin, John A.
To: "Turzi, Joseph"
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704
Date: Thursday, May 03, 2012 4:58:00 PM

Mr. Turzi:

The charge names both "Fresh & Easy Neighborhood Market" and "TESCO, plc" as Charged Parties in the above-captioned case. (Please see that Attachment to the Charge.) Further, the charge alleges, "within the last six months, the above-named *employers* have maintained unlawful rules in their "Code of Business Conduct" which interfered with rights guaranteed by Section 7 of the Act." (emphasis added).

Again, I am requesting that you provide a response so the investigation may be informed by the benefit of your input. Thank you.

From: Turzi, Joseph [mailto:Joe.Turzi@dlapiper.com]
Sent: Thursday, May 03, 2012 4:50 PM
To: Rubin, John A.
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Dear Mr. Rubin:

Thank you for this additional information.

Unfortunately, I no longer understand what issues it is that you seek to address. The charge, as I understand it, alleges that Tesco's policy somehow constitutes a violation by Fresh & Easy. In the e-mail below, you appear to suggest that the violation is based on Fresh & Easy's policy, even though there is no charge to that affect. Clearly, the two allegations are mutually exclusive, both policies cannot apply.

Absent a clear charge, I fear that there is nothing to which my client can respond. In fact, asking my client to address these mutually exclusive theories appears to raise some serious and fundamental due process issues.

Finally, it appears to me that the charging party was aware of the Fresh & Easy policy, but nonetheless alleged that the Tesco policy applied. I am curious as to why the original charge does not constitute a willful, false statement subject to sanctions under 18 U.S.C. Section 1001.

Best regards,

Joe Turzi

From: Rubin, John A. [mailto:John.Rubin@nlrb.gov]
Sent: Tuesday, May 01, 2012 8:49 PM
To: Turzi, Joseph
Subject: RE: Tesco, plc New Tesco House/Fresh & Easy Market, Case 31-CA-07704

Mr. Turzi:





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 31
11150 W. OLYMPIC BLVD
STE 700
LOS ANGELES, CA 90064-1825

Agency Website: www.nlrb.gov
Telephone: (310) 235-7351
Fax: (310) 235-7420

July 25, 2012

DAVID A. ROSENFELD, ATTORNEY AT LAW
WEINBERG, ROGER & ROSENFELD, P.C.
1001 MARINA VILLAGE PARKWAY, SUITE 200
ALAMEDA, CA 94501

Re: Tesco, plc New Tesco House/Fresh &
Easy Neighborhood Market
Case 31-CA-077074

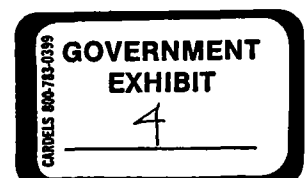
Dear Mr. Rosenfeld:

We have carefully investigated and considered your charge that FRESH & EASY NEIGHBORHOOD MARKET ("Fresh & Easy") and TESCO, PLC, NEW TESCO HOUSE ("Tesco") have violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on the investigation, I have decided to dismiss the above-referenced charge with respect to Tesco, plc New Tesco House. Your charge alleges that Tesco, plc New Tesco House ("Tesco") violated Section 8(a)(1) of the Act by maintaining unlawful rules in its "Code of Conduct" which interfered with rights guaranteed by Section 7 of the Act. The investigation failed to establish that Tesco is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. For this reason, I have decided to dismiss this portion of your charge because of the Board's lack of jurisdiction over Tesco. All other portions of the charge remain outstanding.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

Means of Filing: An appeal may be filed electronically, by mail, or by delivery service. Filing an appeal electronically is preferred but not required. The appeal MAY NOT be filed by fax. To file an appeal electronically, go to the Agency's website at www.nlrb.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. To file an appeal by mail or delivery service, address the appeal to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. Unless filed electronically, a copy of the appeal should also be sent to me.

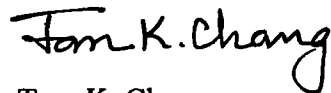


Appeal Due Date: The appeal is due on **August 8, 2012**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **August 7, 2012**.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel may grant you an extension of time to file the appeal. A request for an extension of time may be filed electronically, by fax, by mail, or by delivery service. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number and follow the detailed instructions. The fax number is (202)273-4283. A request for an extension of time to file an appeal **must be received on or before August 8, 2012**. A request for an extension of time that is mailed or given to the delivery service and is postmarked or delivered to the service before the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed electronically, a copy of any request for extension of time should be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,



Tom K. Chang
Acting Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
FRANKLIN COURT BUILDING
NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

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SARAH R. WRIGHT-SCHREIBER
RUSSELL NAYMARK
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RICHARD T. DRURY, Of Counsel
NINA FENDEL, Of Counsel
ANA M. GALLEGOS, Of Counsel

* Also admitted in Arizona
** Admitted in Hawaii
*** Also admitted in Nevada
**** Also admitted in Illinois
***** Also admitted in Missouri
***** Also admitted in New York

August 1, 2012

Via Electronic filing
Office of Appeals
National Labor Relations Board
1099 14th Street, NW
Washington, DC 20570

Re: United Food and Commercial Workers International Union v.
Tesco, plc and Fresh & Easy Neighborhood Market
Case 31-CA-077074

Dear Office of Appeals:

This is an appeal from the decision of the Regional Director to refuse to issue complaint.

Tesco is a British corporation. On the other hand its subsidiary is Fresh & Easy Neighborhood Market which operates in 3 states.

The fact is that from time to time Tesco employees are here and have been here visiting the stores. Thus, it has employees who are present in the United States from time to time. It is thus an employer.

When those Tesco employees are in this Country, they are subject to our laws, just as Tesco is subject to our laws when it sends its employees to work here.

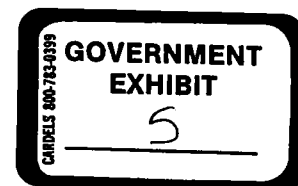
The matter should be remanded to the Region for investigation of this theory of jurisdiction. The Charging Party is prepared to present evidence that Tesco employees have been in this Country off and on and repeatedly monitoring the activities of its subsidiary.

Sincerely,

/s/ David A. Rosenfeld

David A. Rosenfeld

DAR:kts
opeiu 3 afl-cio(1)130774/678663
cc: Region 31 (310)2357420





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

August 28, 2012

DAVID A. ROSENFELD, ATTORNEY AT LAW
WEINBERG ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY STE 200
ALAMEDA, CA 94501-6430

Re: Tesco, plc New Tesco House/Fresh & Easy
Neighborhood Market
Case 31-CA-077074

Dear Mr. Rosenfeld:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of July 25, 2012.

More specifically, the Region properly dismissed the allegation against Tesco itself as that entity is a British company not shown to independently conduct business in the United States. The NLRA does not apply where the United States lacks sovereignty or some measure of control in the territory at issue. The Supreme Court has explained, "[e]ven though the NLRA contain[s] broad language that refer[s] by its terms to foreign commerce, § 152(6), this Court refused to find a congressional intent to apply the statute abroad because there was not 'any specific language' in the Act reflecting congressional intent to do so." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248, 251-52 (1991) (citing *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 19 (1963)). No evidence was presented that Tesco itself is engaged in any commerce in the United States. Compare *State Bank of India v. NLRB*, 808 F.2d 526, 533 (7th Cir. 1986) ("In contrast to the foreign employers of foreign crewmen . . . the record establishes that the State Bank [of India] is doing business in the United States and in fact has made it clear that they intend to expand their market share in this country."). The fact that it is a parent company for Fresh & Easy does not warrant a different conclusion. In this regard, your reliance on *Tesco PLC d/b/a Fresh & Easy Neighborhood Market, Inc.*, 358 NLRB No. 65 (June 25, 2012), was misplaced. In that case, the charge was filed against Tesco doing business as Fresh & Easy, whereas in the instant matter the charge was framed seeking separate liability

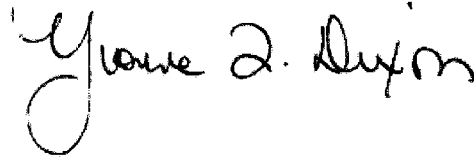


against Tesco. Accordingly, further proceedings are unwarranted.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By:



Yvonne T. Dixon, Director
Office of Appeals

cc: MORI PAM RUBIN, Regional Director
NATIONAL LABOR RELATIONS
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11150 W OLYMPIC BLVD
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TESCO, PLC, NEW TESCO HOUSE
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mab

SEP - 5 2012

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ANA M. GALLEGOS, Of Counsel

* Also admitted in Arizona
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**** Also admitted in Illinois
***** Also admitted in Missouri
***** Also admitted in New York

September 4, 2012

Ms. Yvonne T. Dixon
Director
Office of Appeals
National Labor Relations Board
1099 14th Street, N.W.
Washington, DC 20570

**Re: Tesco, plc New Tesco House/Fresh & Easy Neighborhood Market
NLRB Case No. 31-CA-077074
Request for Reconsideration**

Dear Ms. Dixon:

The Region's investigation ignored the fact that Tesco does business in this country. Not only does it do business through its subsidiary, but it has its employees in this country on a repeated and fairly constant basis supervising and monitoring affairs of its subsidiary. We advised the Region and we advised the Office of Appeals of specific names of Tesco employees who are in this country working. Your letter and the Region's investigation ignores this fact.

Sincerely,



David A. Rosenfeld

DAR:mp
opeiu 3 afl-cio(1)

130774/682613





UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

September 21, 2012

DAVID A. ROSENFELD, ESQ.
WEINBERG ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY
STE 200
ALAMEDA, CA 94501-6430

Re: Tesco, plc New Tesco House/Fresh & Easy
Neighborhood Market
Case 31-CA-077074

Dear Mr. Rosenfeld:

This is in reply to your letter of September 4, 2012. To the extent you argue that Tesco employees are working in this country and therefore this Agency has jurisdiction over Tesco, your argument is without merit. No probative evidence has been shown that such employees are engaged independently on behalf of Tesco rather than such performance is in Tesco's capacity as the parent company of Fresh & Easy Neighborhood Market. Absent a showing that Tesco itself is engaged in commerce in this country, there is no basis for a departure from our prior decision. Accordingly, your motion is denied and this case remains closed.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By:

Deborah Yaffe, Acting Director
Office of Appeals

cc: MORI PAM RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS
BOARD
11150 W OLYMPIC BLVD STE 700
LOS ANGELES, CA 90064-1825

PHILLIP MASON
FRESH & EASY NEIGHBORHOOD
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2120 PARK PL STE 200
EL SEGUNDO, CA 90245-4741



Tesco, plc New Tesco House/Fresh & Easy
Neighborhood Market
Case 31-CA-077074

-2

TESCO, PLC, NEW TESCO HOUSE
DELAMARE ROAD
CHESHNUT, HERTFORDSHIRE
ENLAND EN8 9SL, CA 90064

UNITED FOOD & COMMERCIAL
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UNION
3200 INLAND EMPIRE BLVD STE 160
ONTARIO, CA 91764-5575

mjb

Manriquez, Miguel A.

From: Manriquez, Miguel A.
Sent: Friday, October 05, 2012 9:26 AM
To: 'nicholas.hankey@dlapiper.com'
Subject: 31-CA-077074 Fresh & Easy Neighborhood Market
Attachments: DIS.31-CA-077074.Partial_Dismissal_Letter[1].pdf; 8-28-12 appeal denial.pdf

Nick,

Please see the attached letters as you requested.

Miguel A. Manriquez

Field Attorney

National Labor Relations Board, Region 31

11150 W. Olympic Boulevard, Suite 700

Los Angeles, CA 90064

Telephone: (310) 235-7350

Fax: (310) 235-7420



11/8/2012



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
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LOS ANGELES, CA 90064-1825

Agency Website: www.nlrb.gov
Telephone: (310) 235-7351
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July 25, 2012

DAVID A. ROSENFELD, ATTORNEY AT LAW
WEINBERG, ROGER & ROSENFELD, P.C.
1001 MARINA VILLAGE PARKWAY, SUITE 200
ALAMEDA, CA 94501

Re: Tesco, plc New Tesco House/Fresh &
Easy Neighborhood Market
Case 31-CA-077074

Dear Mr. Rosenfeld:

We have carefully investigated and considered your charge that FRESH & EASY NEIGHBORHOOD MARKET ("Fresh & Easy") and TESCO, PLC, NEW TESCO HOUSE ("Tesco") have violated the National Labor Relations Act.

Decision to Partially Dismiss: Based on the investigation, I have decided to dismiss the above-referenced charge with respect to Tesco, plc New Tesco House. Your charge alleges that Tesco, plc New Tesco House ("Tesco") violated Section 8(a)(1) of the Act by maintaining unlawful rules in its "Code of Conduct" which interfered with rights guaranteed by Section 7 of the Act. The investigation failed to establish that Tesco is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act. For this reason, I have decided to dismiss this portion of your charge because of the Board's lack of jurisdiction over Tesco. All other portions of the charge remain outstanding.

Your Right to Appeal: You may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals. If you appeal, you may use the enclosed Appeal Form, which is also available at www.nlrb.gov. However, you are encouraged to also submit a complete statement of the facts and reasons why you believe my decision to dismiss your charge was incorrect.

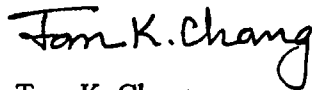
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Appeal Due Date: The appeal is due on **August 8, 2012**. If you file the appeal electronically, we will consider it timely filed if you send the appeal together with any other documents you want us to consider through the Agency's website so the transmission is completed by **no later than 11:59 p.m. Eastern Time** on the due date. If you mail the appeal or send it by a delivery service, it must be received by the Office of Appeals in Washington, D.C. by the close of business at **5:00 p.m. Eastern Time** or be postmarked or given to the delivery service no later than **August 7, 2012**.

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Very truly yours,



Tom K. Chang
Acting Regional Director

Enclosure

cc GENERAL COUNSEL
OFFICE OF APPEALS
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NATIONAL LABOR RELATIONS BOARD
1099 14TH STREET, NW
WASHINGTON, DC 20570

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DLA PIPER LLP
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WASHINGTON, DC 20004



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

August 28, 2012

DAVID A. ROSENFELD, ATTORNEY AT LAW
WEINBERG ROGER & ROSENFELD
1001 MARINA VILLAGE PKWY STE 200
ALAMEDA, CA 94501-6430

Re: Tesco, plc New Tesco House/Fresh & Easy
Neighborhood Market
Case 31-CA-077074

Dear Mr. Rosenfeld:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered. The appeal is denied substantially for the reasons in the Regional Director's letter of July 25, 2012.

More specifically, the Region properly dismissed the allegation against Tesco itself as that entity is a British company not shown to independently conduct business in the United States. The NLRA does not apply where the United States lacks sovereignty or some measure of control in the territory at issue. The Supreme Court has explained, "[e]ven though the NLRA contain[s] broad language that refer[s] by its terms to foreign commerce, § 152(6), this Court refused to find a congressional intent to apply the statute abroad because there was not 'any specific language' in the Act reflecting congressional intent to do so." *EEOC v. Arabian American Oil Co.*, 499 U.S. 244, 248, 251-52 (1991) (citing *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10, 19 (1963)). No evidence was presented that Tesco itself is engaged in any commerce in the United States. Compare *State Bank of India v. NLRB*, 808 F.2d 526, 533 (7th Cir. 1986) ("In contrast to the foreign employers of foreign crewmen . . . the record establishes that the State Bank [of India] is doing business in the United States and in fact has made it clear that they intend to expand their market share in this country."). The fact that it is a parent company for Fresh & Easy does not warrant a different conclusion. In this regard, your reliance on *Tesco PLC d/b/a Fresh & Easy Neighborhood Market, Inc.*, 358 NLRB No. 65 (June 25, 2012), was misplaced. In that case, the charge was filed against Tesco doing business as Fresh & Easy, whereas in the instant matter the charge was framed seeking separate liability

Tesco, plc New Tesco House/Fresh & Easy
Neighborhood Market
Case 31-CA-077074

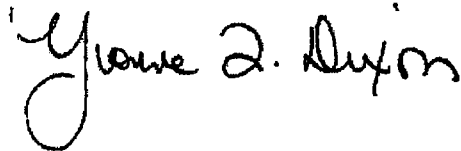
-2

against Tesco. Accordingly, further proceedings are unwarranted.

Sincerely,

Lafe E. Solomon
Acting General Counsel

By:



Yvonne T. Dixon, Director
Office of Appeals

cc: MORI PAM RUBIN, Regional Director
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MARKET
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EL SEGUNDO, CA 90245-4741

TESCO, PLC, NEW TESCO HOUSE
DELAMARE ROAD
CHESHNUT, HERTFORDSHIRE
ENLAND EN8 9SL, CA 90064

UNITED FOOD & COMMERCIAL
WORKERS INTERNATIONAL
UNION
3200 INLAND EMPIRE BLVD STE 160
ONTARIO, CA 91764-5575

mab

From: [Hankey, Nicholas](#)
To: [Manriquez, Miguel A.](#)
Cc: [Hanrahan, Colleen](#); [Turzi, Joseph](#); [Hankey, Nicholas](#)
Subject: 31-CA-077074; 31-CA-080734
Date: Monday, October 15, 2012 4:59:37 PM
Attachments: [KSJ99037 CodeConduct v4RS 102012.pdf](#)

Mr. Manriquez,

We are writing in response to the Region's proposed settlement agreement in the above-referenced matters. Unfortunately, absent some clarity with respect to the allegations in the charges, my client has no basis on which to respond to the Region. As we understand the charge in Case No. 31-CA-077074, the allegation is that Fresh & Easy's application of Tesco PLC's Code of Business Conduct violates the Act. That allegation is contradicted directly by the charge in Case No. 31-CA-080734, which alleges that it is Fresh & Easy's own Code of Business Conduct that violates the Act. Clearly, these two allegations are mutually exclusive, as both policies cannot apply.

On May 3, 2012, Fresh & Easy requested that the Region provide additional information with respect to these allegations and clarify which of these mutually exclusive theories it was pursuing. To date, the Region has not provided any meaningful response. Instead, the Region only added to the confusion when it dismissed the portion of the charge in Case No. 31-CA-077074 against Tesco. Although the Region's letter explains that the portions of the charge against Fresh & Easy remain outstanding, it failed to provide any rational basis for the position that the mutually exclusive policies both apply. At a minimum, the Region's position raises serious due process issues.

In any event, Fresh & Easy's Code of Business Conduct does not violate the NLRA. Nonetheless, to eliminate any possible confusion, Fresh & Easy has rescinded its policy and replaced it with a new policy that cannot be interpreted to interfere with employees' rights under the NLRA. For your convenience, we have attached a copy of the Company's Code of Business Conduct, which contains the revised policy.

We are available to discuss this matter further at your convenience.

Thanks,

Nick

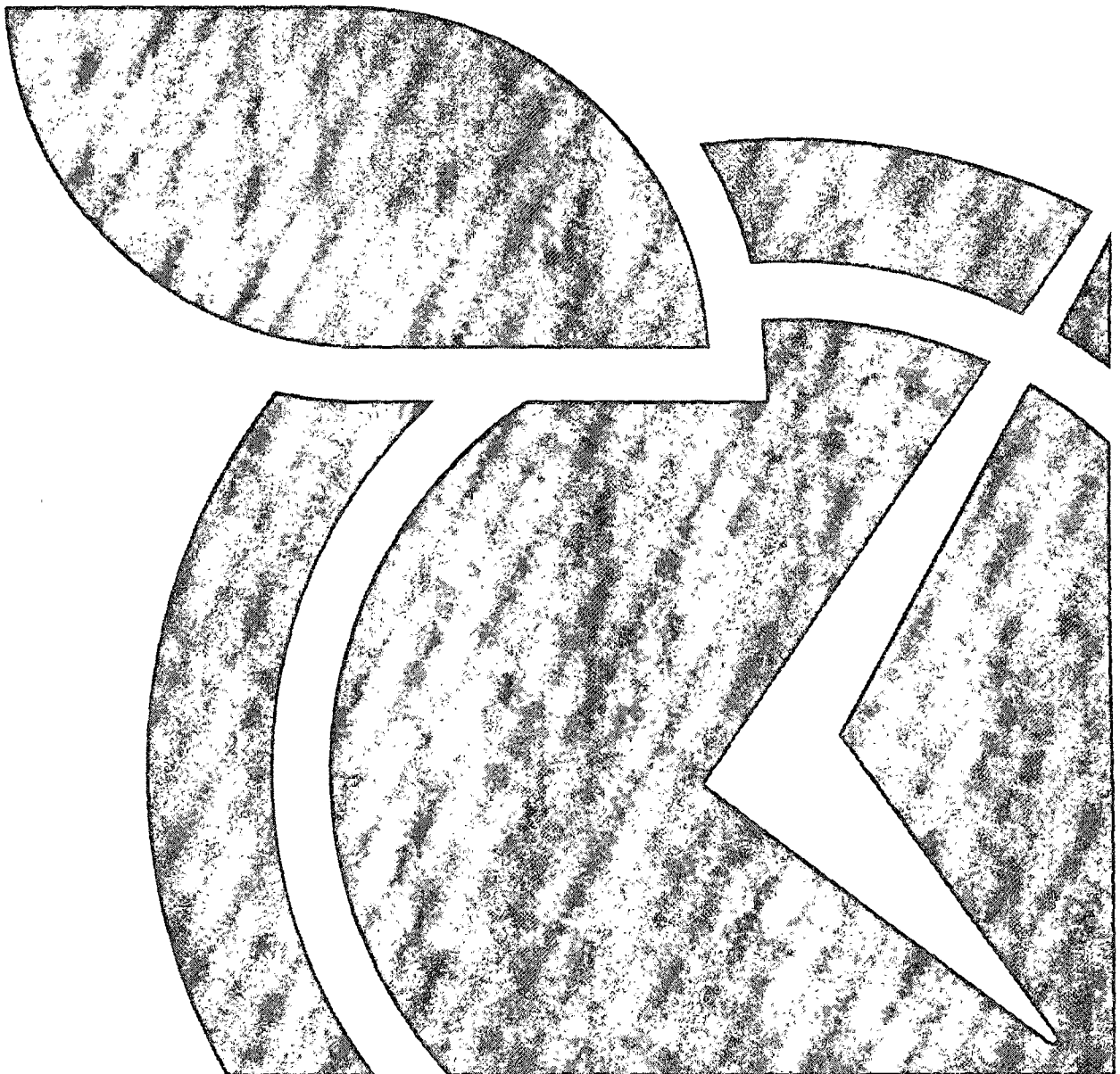
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CODE OF BUSINESS CONDUCT

Fresh & Easy Neighborhood Market





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Code of Business Conduct

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Our Core Purpose

To create value for customers
to earn their lifetime loyalty

With Our Values

- No one tries harder for customers
- Treat people how we like to be treated



chief executive's introduction

The Code of Business Conduct –
doing the right thing by living our Values

Our success as a business comes from our core purpose, **To create value for customers to earn their lifetime loyalty**, and the two main Values that underpin it, **No one tries harder for customers**, and **Treat people how we like to be treated**. When I face difficult decisions, I find relying on our Values is always a good place to start.

The Code of Business Conduct can help guide us when we face complicated or sensitive issues and is one of the ways we can put our Values into practice at work.

The Code lays down some of the most important responsibilities placed on our people wherever they work. These are serious duties, based on the high standards of ethics we expect from our staff, respect for the law and the need to report apparent wrongdoing. And they apply not only to our Fresh & Easy team, but to others that we work with, since we should aim to do business with people and companies who share our standards and Values. Making sure we meet these standards is what will keep us successful. It will ensure that our customers, suppliers and our staff all enjoy working with us.

If you're ever in any doubt about what action to take about any issue set out in the Code, please make sure you speak to your manager or use our Ethics Hotline. I know that our Ethics Hotline is one of the best ways to report any concerns you may have. It is a completely confidential service and, if you choose, you can raise your concerns anonymously.

I have always found that, whatever the situation, the best course of action is the open and transparent one. By making sure the way we do business is fair and ethical, we live the Fresh & Easy Values and are proud of the company we work for.

Tim Mason
Chief Executive





how to use the code of business conduct

USING THE CODE OF BUSINESS CONDUCT

As a business, wherever we operate we will always abide by the law. The Code of Business Conduct captures some of our most important individual responsibilities and obligations as we go about our work and, as a member of staff, you must comply with it. Acting legally and following our policies and best practices are some of the ways in which we ensure that we always do our best for customers and for each other.

The Code provides guidance on fourteen key issues that may arise as you work for Fresh & Easy and indicates who you should contact if you think that you, or another member of staff, may have breached these rules. Of course, there will always be other challenging situations that are not presently covered by the Code. If you are unsure how to act, speaking to your Line Manager is often the best course of action, or calling our anonymous Ethics Hotline. Doing nothing is not an option.

If you are required to provide an annual statement of compliance with the terms of the Code, you must do so accurately and truthfully. If you cannot provide this statement, you will be expected to explain why not. Breaches of the Code, Fresh & Easy policy or the law may result in disciplinary action.

HOW DOES THE CODE APPLY TO OUR BUSINESSES AROUND THE WORLD?

Fresh & Easy is part of a global business owned by Tesco, which operates within a complex matrix of law, regulation and policy. The Code sets out the minimum requirements that Tesco expects from staff wherever in the world they are located. From time to time, Fresh & Easy may also adopt additional policies to reflect additional local requirements, customs or best practice, so long as these are no less strict than this Code. And where local laws or policies are stricter than the Code, the local rules prevail. If you are unsure about the application of local laws or policies, you should contact your Line Manager or our Legal Department for further advice.



what is expected of me?

CUSTOMER ASSISTANTS AND NON-MANAGERIAL STAFF

You should:

- Always follow the law and demonstrate that you "know your stuff" when it comes to doing your job
- Ensure that your manager has briefed you about the Code and you have asked any questions you have about it. If you'd like to receive further copies, just ask your Line Manager or visit the Fresh & Easy corporate website (www.freshandeasy.com)
- If you think that the law or the Code have been breached, you have an obligation to raise your concerns (See "Raising your concerns," on page 4.)

PEOPLE MANAGERS

As a manager, you have additional responsibilities to:

- Know the Code
- Ensure your team knows about the Code and how it affects them
- Act responsibly and professionally, if your direct reports bring to your attention any allegations that the Code has been breached. This means that you should investigate any complaint or allegation that is reported to you and work with our Legal Department or other departments to resolve any issues that arise. (See contacts, below.)

CONTACT	EMAIL ADDRESS	TELEPHONE NUMBER
Legal Department	legalservices@freshandeasy.com	310.341.1435
Employee Relations	employeerelations@freshandeasy.com	310.341.1368
Information Security	info.security@freshandeasy.com	310.341.1265
Loss Prevention	lossprevention@freshandeasy.com	310.341.1312
Tesco Company Secretary's Department	company.secretary@uk.tesco.com	+44 1992 644088
Tesco Ethical Trading	ethical.audits@uk.tesco.com	+44 1707 678719





raising your concerns

The Code seeks to set out how we should act on behalf of our business. If you suspect that the Code, or the laws that underpin it, are not being followed, you have an obligation to report it. Anyone who acts in good faith to raise a concern about a possible breach will be supported by the business.

WHO SHOULD I CONTACT IF I THINK THE CODE MAY HAVE BEEN BREACHED?

You should first contact your Line Manager, unless that is the person you suspect has breached the Code. If you cannot speak to your Line Manager, you should contact your Personnel Manager. Alternatively, you can contact our anonymous Ethics Hotline, at the numbers/email addresses listed on page 5 or the relevant contact listed on page 3.

ABOUT OUR ANONYMOUS ETHICS HOTLINE

Our anonymous Ethics Hotline allows you to report real concerns regarding misconduct at work. You must speak out if you:

- Have concerns at work about anything you think may be unlawful, breaches the Code or company policy
- Think there are unreported dangers to staff, customers or the general public
- Think that information about these things is being deliberately concealed

Our Ethics Hotline is completely confidential and offers callers total anonymity. You will not be required to give your name in order to raise a concern. But, if you do leave your name, we will be able to report back to you the results of any investigations or contact you to request further information (if necessary).

As part of Tesco's global business, we support the UK Public Interest Disclosure Act 1998 (and its federal and state equivalents in the United States), which protects the confidentiality of complaints. This means that, as long as you are acting in good faith and your concerns are genuine, you are legally protected from victimization and will not be at risk of losing your job or suffering any form of retaliation as a result of raising a concern, even if you are mistaken.

ANONYMOUS ETHICS HOTLINES

COMPANY	ADDRESS	TELEPHONE NUMBER
Fresh & Easy	https://secure.ethicspoint.com/domain/en/report-company.asp	888.208.6750
Tesco	protector.line@uk.tesco.com	01992 644999





Our Values help us put our customers first, without compromising our strong relationships with suppliers. This section of the Code covers issues that are critical to how we buy the products sold in our stores.

COMPETITION LAWS

Competition is the lifeblood of our business and has helped bring down the cost of shopping for our customers. Competition laws exist on the federal and state levels. We support these laws, because competition benefits the economy and our customers. We take breaches of competition law extremely seriously. We ensure that our employees know their responsibilities under the law, because breaking the law may lead to severe criminal and civil penalties for the company and individuals involved.

What does it mean for me?

DO

- Ensure that all decisions about future prices, or any other part of our customer offer, are made only by Fresh & Easy
- Protect our confidential information, and ensure that our suppliers do the same
- Attend all relevant training sessions and refresher courses on competition law organized by the Legal Department

DON'T

- Discuss any confidential information with our competitors, in particular the future retail prices of our products
- Accept from our suppliers any confidential information about our competitors, for example, future prices and promotions

CONTACT

If you suspect that you have breached competition laws or that others may have, you must immediately contact:

- Our Legal Department or
- Our anonymous Ethics Hotline

TRADE RESTRICTIONS AND SANCTIONS

From time to time, we are restricted from buying products from certain countries. This may be due to government advice (from the United States, the UK or the government of another country where we operate), legislation or company policy. Travel to these countries may also be restricted. Knowingly breaking trade restrictions may damage trust in our brand among customers and may result in serious penalties, both for the business and employees.

What does it mean for me?

DO

- Know which countries you may buy from and travel to
- If you believe someone is violating any form of trade restrictions, you must report this to your Line Manager, our Legal Department or our anonymous Ethics Hotline

DON'T

- Buy from or travel to countries covered by sanctions or trade restrictions

CONTACT

For more information, contact our Legal Department.





the way we trade

RELATIONSHIPS WITH OUR COMMERCIAL SUPPLIERS

We buy and sell our products responsibly – so our customers can know that everything they buy is produced under decent conditions and everyone involved is treated fairly. We expect and support our suppliers to meet high labor standards for their employees, as set out in the Ethical Trading Initiative's (ETI) Base Code (<http://www.ethicaltrade.org/eti-base-code>).

In this context, how we buy from our suppliers is as important as what we buy. Our commercial buyers know that the key to delivering the best offer for customers is the development of long-term, mutually beneficial relationships with suppliers, who share our Values and observe the same high standards.

We expect our buyers to act in accordance with our policies and codes of practice that exist in the United States and ensure that their personal behavior at all times maintains our highest standards of conduct. This is so customers can be confident that the goods they purchase from us have been bought from our suppliers in a professional and appropriate way.

What does it mean for me?

DO

- If you are a commercial buyer or technical manager, ensure you are familiar with, and abide by, all relevant federal, state and local requirements for the buying and selling of products, and the ETI Base Code
- If you have any concerns about the possible mistreatment of any supplier's workers by their managers, you have a duty to raise these concerns with your managers and/or the Trading Law team

DON'T

- Place orders with a supplier, if you are concerned that they may need to breach ETI labor standards to complete it
- Use language or behaviors that do not match our Values: "Treat people how we like to be treated"

CONTACT

If you have any concerns about how to apply our policies, legislation or codes governing the relationships between retailers and their suppliers, contact our Legal Department.



personal and business integrity

Our Values help ensure that we do not compromise ourselves or the business by our actions. This section of the Code covers a number of important areas where we must always ensure that our activities are fully in compliance with the law and best practice.

FRAUD, BRIBERY AND CORRUPTION

We are committed to maintaining the highest standards of ethics and integrity in the way we do business around the world. Bribery and corruption in all forms are illegal and unacceptable. They damage competition and markets, increase costs, reduce quality for customers and damage their trust.

Any act of fraud, bribery or corruption is treated with extreme seriousness by Fresh & Easy – and any help given to people carrying out such acts is not tolerated. We expect our agents and consultants to adopt the same approach. Bribery and corruption, whatever the extent, are illegal in all the countries in which we operate and those breaking these laws are liable to be prosecuted. Alleged offenders who are UK citizens may also be prosecuted in the UK, no matter where the offense was committed.

What does it mean for me?

DO

- Immediately report any attempts to offer you a bribe or get you to act in a way that could be to the disadvantage of Fresh & Easy. Contact your Line Manager, Legal Department, anonymous Ethics Hotline or the Director of Loss Prevention
- Co-operate fully with law enforcement agencies and investigators and support prosecution or disciplinary action, where sufficient evidence exists
- Be alert to the possibility that bribery and corruption can occur, and regularly review our procedures and controls to ensure that they are robust
- Check with our Legal Department as to what is permitted and acceptable, before taking any such actions

DON'T

- Give bribes, payments, gifts or any other benefits in order to win votes, contracts or secure any other form of illegal or improper benefits
- Accept bribes of any kind

CONTACT

For more information, contact our Legal Department or the Director of Loss Prevention.





CONFLICTS OF INTEREST

A conflict of interest happens when your position in the business means you can make a personal gain or benefit over and above your terms of employment. We should make sure that our personal interests do not conflict with the interest of the business or our customers. To protect against this, there are safeguards in place, which we must all follow.

What does it mean for me?

DO

- Tell your Line Manager if you feel you might have a potential conflict of interest

DON'T

- Conduct business on behalf of Fresh & Easy with a company from which you, or a family member, might benefit unfairly. (Other employees can do business with such a company, but you must not be involved or try to influence the relationship in any way.)
- Own more than 5% of the issued shares of any competitor, supplier or other organization that regularly deals with Fresh & Easy, if your position with Fresh & Easy could lead to a personal conflict of interest of any kind

CONTACT

In certain circumstances, your family members, or a company in which you have an interest, may be permitted to do business with Fresh & Easy. If you have any questions regarding possible conflicts of interest, contact:

- Your Line Manager
- Our Legal Department

INSIDER DEALING AND MARKET ABUSE

We have a legal duty never to use company information that has not been made public for our own benefit, or for the benefit of others we know – for example, by selling or buying shares on the basis of price-sensitive information. Using information for our own benefit or for others is called “insider dealing” and, in almost all countries, is a serious criminal offense. Other abuses of information, such as disclosing sensitive information (other than in the proper course of your employment) is known as “market abuse” and may also result in serious criminal and/or civil penalties. As a company and as employees, we have a responsibility to ensure that we know and abide by both the law and our internal policy.

What does it mean for me?

DO

- You can deal in Tesco shares or other companies' shares in most instances
- Where your employment requires you to be in possession of non-public, price-sensitive information, you will be added to an Insider List and notified by the Company Secretary. You will not be able to deal in the company's shares until you are told that you have been taken off the Insider List

DON'T

- Deal in Tesco shares on a short-term basis, if you are in possession of information that is price-sensitive and not public. If you are not sure what this covers, contact our Legal Department for clarification
- Deal in Tesco shares during “close periods,” when share dealing is restricted to ensure that no one profits from privileged information. All applicable employees will be notified in advance
- Pass on non-public, price-sensitive information to other people, or encourage others to deal in the company's shares on the basis of such information, even if you do not deal yourself or otherwise profit from passing on the information

CONTACT

For more information about dealing in Tesco shares or to report irregularities, contact:

- Your Line Manager
- Our Legal Department
- Director of Loss Prevention
- Anonymous Ethics Hotline
- Tesco Company Secretary's Department





GIFTS AND IMPROPER PAYMENTS

In many cultures, the giving and receiving of gifts, entertainment or services at a reasonable level is an important part of building relationships with suppliers and other parties. But this should never influence – or appear to influence – our business decisions in any way. We will never seek or exert improper influence in exchange for promises, gifts or any other inducements.

What does it mean for me?

DO

- Tell your manager, obtain receipts and log the details on our Gift Register, if you pay for any private work to be done where you know the supplier or contractor performs work for Fresh & Easy
- If you accept a gift or entertainment above the financial value provided in our Gifts Policy, tell your manager and log the details on the Gift Register

DON'T

- Accept free or discounted work or services from a supplier or contractor for your personal benefit
- Accept inappropriate gifts or other benefits from third parties
- Accept any gift, entertainment or services from a third party that comes with conditions that result in suppliers (including potential new suppliers) gaining a benefit

CONTACT

Speak to your Line Manager for clarification on gifts and payments.

POLITICAL ACTIVITY

As a company, we have no political affiliations, and we do not make political donations, within the normal meaning of that word. We work with federal, state and local governments and other parties only on issues that are vital to the interests of our business. From time to time, we may also sponsor political events. Any expenditure that we do make is reported in line with applicable laws.

All employees have the right, like any other citizen, to be politically active, as long as this is kept separate from our work duties and doesn't influence how we behave to customers, colleagues or anyone else.

What does it mean for me?

DO

- Feel free to engage in personal political activity, as long as this is done on your own time and does not adversely affect the reputation of the business
- Talk to your manager, if you require time off work for political or representative activity – such as carrying out duties as a local elected council member or commissioner

CONTACT

For more information about political activity, speak to your Line Manager.





the resources of the company and our customers

One of our Values, "No one tries harder for customers," is central to our success and encourages us to understand our customers and deliver for them every day. This section of the Code covers issues relating to the use of property that belongs to the business, customers or others.

INTELLECTUAL PROPERTY

Intellectual property (IP) includes all patents, trademarks, design rights, copyright or other know-how owned by Fresh & Easy or Tesco. By protecting our IP, we can ensure that the value in our brand is maintained. Also it helps us to provide customers with new products and designs and develop new processes, software and systems to improve our business. We must ensure that we not only protect our brands, designs and inventions, but we also respect the IP rights of others.

What does it mean for me?

DO

- Ensure that the ownership of new IP rights is agreed up front when working with another company or asking a third party to work on our behalf

DON'T

- Allow third parties to use our brands (such as Fresh & Easy, our logo, "The Big Kahuna," Tesco and other brands used by the business around the world) or any other IP without consulting our Legal Department
- Knowingly use or copy the IP rights of others

CONTACT

If you have any questions about the use of IP rights, contact our Legal Department.

RESPONSIBLE USE OF COMPANY IT

We each have a duty to use company information technology (IT) resources responsibly and appropriately. We should protect Fresh & Easy's assets from misuse, theft and waste. We must also ensure that other companies cannot gain an unfair advantage over us by getting important information about our business.

What does it mean for me?

DO

- Use all company resources appropriately
- Ensure that hardware, such as laptops, phones and other handheld devices, are never left in public or unsecured places

DON'T

- Misuse company resources, including telephone, email and Internet access, for personal activities
- Share user IDs or passwords
- Install any non-Fresh & Easy approved or unlicensed software onto your computer or download, store or pass on inappropriate material
- Connect any non-Fresh & Easy or unauthorized device to your computer or to the network

CONTACT

For more information, contact our IT Department.





the resources of the company and our customers

CONFIDENTIALITY AND DATA PROTECTION

We have an important duty to our customers and our employees to respect the information we hold about them and ensure it is protected and handled responsibly. The trust of our staff and customers is very important, so we take our obligations under relevant data protection and privacy laws very seriously. We should also regard all information concerning our business as an asset, which, like other important assets, has a value and needs to be suitably protected.

What does it mean for me?

DO

- Make sure any customer or staff information you collect, is relevant, accurate and, where necessary, kept up to date. Keep it for no longer than necessary.
- Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained. This policy does not limit non-supervisory employees' rights to engage in protected activities under the National Labor Relations Act, including the right to share information related to terms and conditions of employment.
- Ensure that data is appropriately and securely stored and disposed of. Be aware of the risk of discussing confidential information in public places.

DON'T

- Release information, without making sure that the person you are providing it to is rightfully allowed to receive it and, where necessary, that it has been encrypted in accordance with Fresh & Easy policy.

CONTACT

If you are ever unsure about how to handle Fresh & Easy data, be cautious and seek advice from:

- Your Line Manager
- Information Security
- Our Legal Department

ACCURATE ACCOUNTING AND MONEY LAUNDERING

To meet our legal obligations and to retain the trust of our customers and shareholders, our activities must be accurately reported in the company's accounts. This means that we will comply with local and international financial reporting rules and other internal reporting policies of the company. This obligation also extends to the reporting of data at our stores. And we must be alert to the possibility that criminals may try to use our business to launder illegally-obtained money, for example, by spending very large amounts of cash in store or attempting to make payments to the business where this would not normally be appropriate.

What does it mean for me?

DO

- Keep accurate records and accounts, if you are responsible for this.
- Seek the necessary approval for expenditure and keep accurate records of spending.
- Cooperate with our internal and external auditors, providing them with the information and documents that they need to do their jobs.
- Report to your Line Manager or our anonymous Ethics Hotline, if you have reason to believe that other employees are keeping inaccurate or falsified records or misappropriating funds.

CONTACT

If you have reason to believe that attempts are being made to launder money through Fresh & Easy or have any concerns about accurate accounting, report to:

- Your Line Manager
- Director of Loss Prevention
- Our anonymous Ethics Hotline





our people

Our success depends on our people. One of our Values, "Treat people how we like to be treated," ensures that we respect those around us. This section of the Code covers the key issues relating to people.

EQUAL OPPORTUNITIES

Our success depends on our people. We aim to employ people who reflect the diverse nature of society and we value the contribution they make, irrespective of age, sex, disability, sexual orientation, race, color, religion, ethnic origin or political beliefs. At our stores, in our distribution centers and in our offices, we recruit on merit, using clearly defined and fair criteria.

We also try to make sure everyone can work in a way that suits their circumstances – we support flexible working, offering part-time roles and encouraging job-sharing opportunities and shift swapping, if possible.

What does it mean for me?

DO

- Demonstrate respect for your fellow employees, and others that you may come into contact with, whether they are customers, suppliers or other parties
- Ensure your own employment decisions, for example, recruiting new staff and performance reviewing those who already work in your team, are determined by merit and business considerations alone
- Understand employment and equal opportunities laws and local cultures that may have an impact on workplace decisions

CONTACT

If you believe that you have been the victim of discrimination, or have any concerns relating to our equal opportunity policies, contact your:

- Line Manager
- Employee Relations Manager
- Anonymous Ethics Hotline

UNACCEPTABLE BEHAVIOR

We do not tolerate abuse or unacceptable behavior in the workplace in any form, whether toward our customers, other employees, suppliers or anyone else. To make sure Fresh & Easy offers a great place to work for all staff, we should be sensitive to actions or behaviors that may be acceptable in one culture but not in another. Some of these behaviors may even be illegal in other countries where Tesco operates. Employees found to have engaged in unacceptable behavior can face serious consequences, such as disciplinary action, including dismissal, and potentially, legal action.

What does it mean for me?

DO

- Create a welcoming and inclusive work environment, and encourage those who you work with to do so by treating everyone as you would like to be treated

DON'T

- Engage in behavior that would be considered by anyone in the team as creating a hostile or intimidating work environment, including making inappropriate jokes or comments
- Spread malicious rumors or use company resources to transmit communications that might be considered derogatory, defamatory, harassing, pornographic or otherwise offensive

CONTACT

If you feel that you have been the victim of harassment or other unacceptable behavior, you should contact your:

- Line Manager
- Employee Relations Manager
- Anonymous Ethics Hotline





Our Core Purpose

To create value for customers to earn their lifetime loyalty

With Our Values

- ☒ No one tries harder for customers
- ☒ Treat people how we like to be treated

Means We Are

**A fresh and easy
place to shop**

- Great food I can trust
- Fresh and easy ideas
- Prices I can't believe
- I can get what I want
- It's quick and easy to shop

A good neighbor

- They're friendly
- They're considerate to their neighbors
- They're part of the community
- They're careful about their impact on the environment
- They're honest, fair and responsible

A great place to work

- I'm treated with respect
- A manager who helps me
- An interesting job
- The flexibility I need
- The opportunity to grow
- The rewards are fair
- We have fun!

And As One Team

**We're passionate
about what we do.**

- We love new things
- We know our stuff
- We show we care
- We share a smile

We keep things simple

- We operate as a discounter
- We focus on what's really important
- We run our business from the shelf edge
- We get things right the first time
- We help our people make the difference

fresh & easy

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Neighborhood Market



the way we trade

OUR "TRADING FAIRLY" PROGRAM

We buy and sell our products responsibly, so our customers can know that everything they buy is produced under decent conditions and everyone involved is treated fairly. We support our suppliers and expect them to meet high labor, health and safety standards for their employees, as set out in our Ethical Trading Code of Practice. Our Code of Practice is based on International and National Labor Laws, as well as the Ethical Trading Initiative (ETI) Base Codes (<http://www.ethicaltrade.org>).

We don't just rely on our suppliers to be knowledgeable about ethical trading topics, but we have built internal programs that ensure we understand the risks for non-conformances related to worker health and safety, human trafficking, child and slave labor issues. We created a program that utilizes our vast international networks of knowledgeable partners internally and externally. We are working proactively to address opportunities and increase the awareness of issues within our supply chain.

We expect our buyers to act in accordance with our policies and codes of practice, so that customers can be confident that the goods they purchase from us have been bought in a professional and appropriate way. We train all of our commercial buying and technical teams in how to ensure compliance, identify issues and respond if non-conformances arise. We strive to ensure long-term corrective actions are put in place and that our trading relationships are built upon our promise of being a "great place to work" throughout our supply chain. Although we don't claim to have all the answers, we do recognize that labor standards issues may arise. We are committed to work with our suppliers to ensure any problems are addressed. Commercial consequences may be enforced if non-conformances are not corrected.

In this context, how we buy from our suppliers is as important as what we buy. Our key to delivering the best offer for our customers is working with suppliers who share our Values and expect the same high standards across their own network of suppliers.

How do we assess and verify the ethical conditions of workers in our supply chain?

TRADING FAIRLY PROGRAM

- Suppliers are required to complete a self-assessment which is based on a third-party system, to determine the likelihood of an issue to exist. This is based on their country of operation, type of product they produce and completion of a detailed questionnaire.
- Suppliers who receive a high-risk rating will be required to undergo an audit. These audits are completed by a recognized, independent third-party auditing company. The audits are generally announced but may be unannounced depending on supplier history, country of operation or known industry issues.
- Supplier purchasing agreements and terms of conditions are in place with all of our direct suppliers which require them to comply with all of our codes of practices, as well as all applicable laws and regulations.
- We facilitate a transparent and open learning environment by ensuring that our suppliers, buyers, technical teams and management are trained on the relevant issues and how to identify and resolve them if they arise.
- We have a mechanism to monitor compliance internally and within our direct supply chain, as well as commercial consequences if non-conformances are found.
- We look for opportunities to participate in best practice building and working with government and non-government organizations to understand and minimize issues arising.



From: Manriquez, Miguel A.
To: Hankey, Nicholas
Subject: RE: 31-CA-077074; 31-CA-080734
Date: Monday, October 15, 2012 8:42:26 PM

Mr. Hankey,

I appreciate your response. To be clear, in this matter, the Region is only concerned with Fresh & Easy's Code of Business Conduct, not Tesco PLC's Code of Business Conduct or Fresh & Easy's application of Tesco's Code of Business Conduct. 31-CA-077074 has been dismissed with respect to Tesco. The allegations in 31-CA-077074 and 31-CA-080734 concern Fresh & Easy's Code of Business Conduct, not Fresh & Easy's application of Tesco's Code of Business Conduct.

According to the Region, the fact that Fresh & Easy has recently replaced its policy does not remedy the alleged violation.

Please send me the executed settlement agreement, which you have received, by close of business on Tuesday, October 16, 2012. Otherwise, the Region will issue complaint in this matter.

Truly,

Miguel Manriquez

From: Hankey, Nicholas [Nicholas.Hankey@dlapiper.com]
Sent: Monday, October 15, 2012 7:59 PM
To: Manriquez, Miguel A.
Cc: Hanrahan, Colleen; Turzi, Joseph; Hankey, Nicholas
Subject: 31-CA-077074; 31-CA-080734

Mr. Manriquez,

We are writing in response to the Region's proposed settlement agreement in the above-referenced matters. Unfortunately, absent some clarity with respect to the allegations in the charges, my client has no basis on which to respond to the Region. As we understand the charge in Case No. 31-CA-077074, the allegation is that Fresh & Easy's application of Tesco PLC's Code of Business Conduct violates the Act. That allegation is contradicted directly by the charge in Case No. 31-CA-080734, which alleges that it is Fresh & Easy's own Code of Business Conduct that violates the Act. Clearly, these two allegations are mutually exclusive, as both policies cannot apply.

On May 3, 2012, Fresh & Easy requested that the Region provide additional information with respect to these allegations and clarify which of these mutually exclusive theories it was pursuing. To date, the Region has not provided any meaningful response. Instead, the Region only added to the confusion when it dismissed the portion of the charge in Case No. 31-CA-077074 against Tesco. Although the Region's letter explains that the portions of the charge against Fresh & Easy remain outstanding, it failed to provide any rational basis for the position that the mutually exclusive policies both apply. At a minimum, the Region's position raises serious due process issues.

In any event, Fresh & Easy's Code of Business Conduct does not violate the NLRA. Nonetheless, to eliminate any possible confusion, Fresh & Easy has rescinded its policy and replaced it with a new policy that cannot be interpreted to interfere with employees' rights under the NLRA. For your convenience, we have attached a copy of the Company's Code of Business Conduct, which contains the revised policy.

We are available to discuss this matter further at your convenience.

Thanks,

Nick

Please consider the environment before printing this email.



The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please reply to the sender and destroy all copies of the message. To contact us directly, send to postmaster@dlapiper.com. Thank you.



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
REGION 31
11150 W OLYMPIC BLVD
STE 700
LOS ANGELES, CA 90064-1825

Agency Website: www.nlrb.gov
Telephone: (310)235-7351
Fax: (310)235-7420

October 22, 2012

Joseph Anthony Turzi, Esq.
DLA Piper LLC (US)
500 8th St NW
Washington, DC 20004-2131

Re.: **FRESH & EASY NEIGHBORHOOD MARKET**
Cases 31-CA-077074 and 31-CA-080734

Dear Mr. Turzi:

Attached is a copy of the Order Consolidating Cases, Consolidated Complaint and Notice of Hearing that issued today pursuant to my direction. It is the policy of the Acting General Counsel of the National Labor Relations Board to encourage settlement of unfair labor practices short of litigation wherever possible. Be assured that this Regional Office fully supports such settlement policy and will be available to discuss settlement of this case at any time prior to the formal hearing, which is scheduled to commence on January 7, 2013.

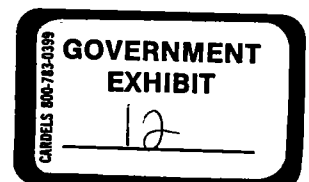
The trial attorney assigned to this matter will contact you in the near future to discuss the possibility of settlement and the arrangement of a settlement conference with our settlement coordinator, Regional Attorney Brian Gee. In the meantime, please also feel free to contact the trial attorney or Mr. Gee anytime regarding settlement of this matter. You can contact Mr. Gee by email at brian.gee@nlrb.gov. If we have not already done so, we will supply you with a copy of a proposed Settlement Agreement setting forth the terms and conditions upon which the matter can be resolved, thereby avoiding costly and time-consuming litigation. We invite you to give this matter your most serious and informed attention well in advance of the hearing.

Very truly yours,


Brian D. Gee
Acting Regional Director

Attachments

cc: David A. Rosenfeld, Esq., Weinberg, Roger & Rosenfeld
1001 Marina Village Pkwy., Suite 200, Alameda, CA 94501-6430



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

FRESH & EASY NEIGHBORHOOD
MARKET

and

Cases 31-CA-077074 and
31-CA-080734

UNITED FOOD AND COMMERCIAL
WORKERS INTERNATIONAL UNION

ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 31-CA-077074 and Case 31-CA-80734, which are based on charges s filed by United Food and Commercial Workers International Union (Union) against Fresh & Easy Neighborhood Market (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1. The charges in the above cases were filed by the Union, as set forth in the following table, and served upon the Respondent on the dates indicated:

<u>Case No.</u>	<u>Date Filed</u>	<u>Date Served</u>
31-CA-077074	Mar. 15, 2012	Mar. 27, 2012
31-CA-080734	May 9, 2012	May 11, 2012

2. (a) At all material times, Respondent, has been has been a Delaware corporation, and a subsidiary of Tesco PLC, with an office and place of business located at 2120 Park Place, Suite 200, El Segundo, California, and with facilities located at various locations throughout facilitiesSouthern California, and has been operating retail operating retail grocery stores.gr stores

(b) In conducting its operations during the calendar year ending December 31, 2011, Respondent derived gross revenues in excess of \$500, 000.

(c) During the period of time described above in paragraph 2(b), Respondent purchased and received at its Southern California grocery stores products, goods, and materials valued in excess of \$5,000 directly from points outside the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Respondent has maintained the following rule:

Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained.

6. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Sections 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practice alleged above in paragraphs 5 and 6, the General Counsel seeks an Order requiring that Respondent rescind the rule described above in paragraph 5, notify all of its employees, electronically, that this has been done, and post the remedial notice on its internet site.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be received by this office on or before November 5, 2012, or postmarked on or before November 3, 2012. Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

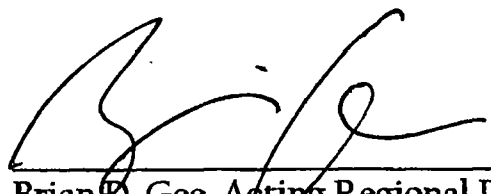
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on File Case Documents, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's

Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on January 7, 2013, 1:00 p.m. at the National Labor Relations Board, Region 31, 11150 W. Olympic Blvd., Suite 700, Los Angeles, California, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: October 22, 2012.



Brian D. Gee, Acting Regional Director
National Labor Relations Board, Region 31
11150 W. Olympic Boulevard, Suite 700
Los Angeles, CA 90064

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such

(OVER)

argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

FRESH & EASY NEIGHBORHOOD MARKET

and

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION

Cases 31-CA-077074 and
31-CA-080734

AFFIDAVIT OF SERVICE OF: Order Consolidating Cases, Consolidated Complaint and Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached).

I, the undersigned employee of the National Labor Relations Board, being duly sworn, say that on October 22, 2012, I served the above-entitled document(s) by certified or regular mail, as noted below, upon the following persons, addressed to them at the following addresses:

CERTIFIED MAIL

Joseph Anthony Turzi, Esq.
DLA Piper LLC (US)
500 8th St NW
Washington, DC 20004-2131

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Pkwy., Suite 200
Alameda, CA 94501-6430

REGULAR MAIL

Phillip Mason
Fresh & Easy Neighborhood Market
2120 Park Place, Suite 200
El Segundo, CA 90245-4741

United Food & Commercial Workers
International Union
3200 Inland Empire Blvd., Suite 160
Ontario, CA 91764-5575

Argie Reporting
5900 Nieman Road, Ste. 200
Shawnee, KS 66203

October 22, 2012

Date

Mara Estudillo, Designated Agent of NLRB |

Name


Signature

NATIONAL LABOR RELATIONS BOARD
NOTICE
Case Nos. 31-CA-077074 and 31-CA-080734

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner of attorney assigned to the case will be please to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(c).
- (2) Grounds thereafter must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***
- (5) Copies must be simultaneously served on all parties (***listed below***), and that the fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of the hearing.

Joseph Anthony Turzi, Esq.
DLA Piper LLC (US)
500 8th St NW
Washington, DC 20004-2131

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Pkwy, Ste 200
Alameda, CA 94501-6430

Phillip Mason
Fresh & Easy Neighborhood Market
2120 Park Pl., Ste 200
El Segundo, CA 90245-4741

United Food & Commercial Workers
International Union
3200 Inland Empire Blvd., Ste 160
Ontario, CA 91764-5575



United States Government

NATIONAL LABOR RELATIONS BOARD

Region 31

11150 W. Olympic Blvd., Suite 700

Los Angeles, CA 90064

Telephone: (310) 235-7350

Facsimile: (310) 235-7420

www.nlr.gov

October 23, 2012

Sent via Regular Mail

Re: *Fresh & Easy Neighborhood
Market* (United Food and
Commercial Workers International
Union)
Case Nos. 31-CA-077074 and 31-
CA-080734

Dear Mr. Turzi and Mr. Rosenfeld:

The Consolidated Complaint and Notice of Hearing concerning the above-referenced cases, which issued on October 22, 2012, contains various formatting errors. Please disregard that complaint and see the attached corrected Order Consolidating Cases, Consolidated Complaint and Notice of Hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian D. Gee", is written over the typed name.

Brian D. Gee
Acting Regional Director



**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31**

FRESH & EASY NEIGHBORHOOD MARKET

and

**UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION**

**Cases 31-CA-077074 and
31-CA-080734**

**ORDER CONSOLIDATING CASES, CONSOLIDATED
COMPLAINT AND NOTICE OF HEARING**

Pursuant to Section 102.33 of the Rules and Regulations of the National Labor Relations Board (the Board) and to avoid unnecessary costs or delay, IT IS ORDERED THAT Case 31-CA-077074 and Case 31-CA-080734, which are based on charges filed by United Food and Commercial Workers International Union (Union) against Fresh & Easy Neighborhood Market (Respondent) are consolidated.

This Order Consolidating Cases, Consolidated Complaint and Notice of Hearing, which is based on these charges, is issued pursuant to Section 10(b) of the National Labor Relations Act, 29 U.S.C. § 151 et seq. (the Act) and Section 102.15 of the Board's Rules and Regulations, and alleges Respondent has violated the Act as described below:

1. The charges in the above cases were filed by the Union, as set forth in the following table, and served upon the Respondent on the dates indicated:

<u>Case No.</u>	<u>Date Filed</u>	<u>Date Served</u>
31-CA-077074	Mar. 15, 2012	Mar. 27, 2012
31-CA-080734	May 9, 2012	May 11, 2012

2. (a) At all material times, Respondent, has been a Delaware corporation, and a subsidiary of Tesco PLC, with an office and place of business located at 2120 Park Place, Suite 200, El Segundo, California, and with facilities located at various locations throughout Southern California, and has been operating retail grocery stores.

(b) In conducting its operations during the calendar year ending December 31, 2011, Respondent derived gross revenues in excess of \$500,000.

(c) During the period of time described above in paragraph 2(b), Respondent purchased and received at its Southern California grocery stores products, goods, and materials valued in excess of \$5,000 directly from points outside the State of California.

3. At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5. At all material times, Respondent has maintained the following rule:

Keep customer and employee information secure. Information must be used fairly, lawfully and only for the purpose for which it was obtained.

6. By the conduct described above in paragraph 5, Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

7. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

As part of the remedy for the unfair labor practice alleged above in paragraphs 5 and 6, the General Counsel seeks an Order requiring that Respondent rescind the rule described above

in paragraph 5, notify all of its employees, electronically, that this has been done, and post the remedial notice on its internet site.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the consolidated complaint. The answer must be **received by this office on or before November 6, 2012, or postmarked on or before November 5, 2012.** Respondent should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

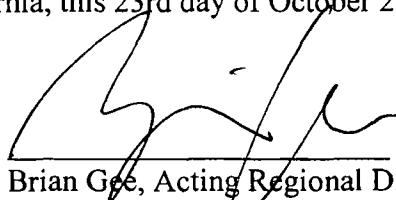
An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlr.gov, click on **File Case Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by

traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **January 7, 2013, 1:00 p.m.** at the National Labor Relations Board, Region 31, 11150 W. Olympic Blvd., Suite 700, Los Angeles, California, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated at Los Angeles, California, this 23rd day of October 2012

A handwritten signature in black ink, appearing to read 'Brian Gee', is written over a horizontal line.

Brian Gee, Acting Regional Director
National Labor Relations Board, Region 31
11150 W. Olympic Boulevard, Suite 700
Los Angeles, CA 90064

**SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD
BEFORE THE NATIONAL LABOR RELATIONS BOARD
IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO
SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT**

The hearing will be conducted by an administrative law judge of the National Labor Relations Board who will preside at the hearing as an independent, impartial finder of the facts and applicable law whose decision in due time will be served on the parties. The offices of the administrative law judges are located in Washington, DC; San Francisco, California; New York, N.Y.; and Atlanta, Georgia.

At the date, hour, and place for which the hearing is set, the administrative law judge, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to ensure that the issues are sharp and clearcut; or the administrative law judge may independently conduct such a conference. The administrative law judge will preside at such conference, but may, if the occasion arises, permit the parties to engage in private discussions. The conference will not necessarily be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record, for example, in the form of statements of position, stipulations, and concessions. Except under unusual circumstances, the administrative law judge conducting the prehearing conference will be the one who will conduct the hearing; and it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference. No prejudice will result to any party unwilling to participate in or make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues. All parties appearing before this hearing who have or whose witnesses have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603, and who in order to participate in this hearing need appropriate auxiliary aids, as defined in 29 C.F.R. 100.603, should notify the Regional Director as soon as possible and request the necessary assistance.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the administrative law judge for approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the administrative law judge specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the administrative law judge and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The administrative law judge will allow an automatic exception to all adverse rulings and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies of exhibits should be supplied to the administrative law judge and other parties at the time the exhibits are offered in evidence. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the administrative law judge before the close of hearing. In the event such copy is not submitted, and the filing has not been waived by the administrative law judge, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. In the absence of a request, the administrative law judge may ask for oral argument if, at the close of the hearing, it is believed that such

(OVER)

argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.

In the discretion of the administrative law judge, any party may, on request made before the close of the hearing, file a brief or proposed findings and conclusions, or both, with the administrative law judge who will fix the time for such filing. Any such filing submitted shall be double-spaced on 8½ by 11 inch paper.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations, with respect to the procedure to be followed before the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the administrative law judge will be considered unless received by the Chief Administrative Law Judge in Washington, DC (or, in cases under the branch offices in San Francisco, California; New York, New York; and Atlanta, Georgia, the Associate Chief Administrative Law Judge) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously on all other parties, and proof of such service furnished to the Chief Administrative Law Judge or the Associate Chief Administrative Law Judge, as the case may be. A quicker response is assured if the moving party secures the positions of the other parties and includes such in the request. All briefs or proposed findings filed with the administrative law judge must be submitted in triplicate, and may be printed or otherwise legibly duplicated with service on the other parties.

In due course the administrative law judge will prepare and file with the Board a decision in this proceeding, and will cause a copy thereof to be served on each of the parties. Upon filing of this decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, on all parties. At that point, the administrative law judge's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the administrative law judge's decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be served on the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations. If adjustment appears possible, the administrative law judge may suggest discussions between the parties or, on request, will afford reasonable opportunity during the hearing for such discussions.

NATIONAL LABOR RELATIONS BOARD
NOTICE
Case Nos. 31-CA-077074 and 31-CA-080734

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner of attorney assigned to the case will be please to receive and to act promptly upon your suggestions or comments to this end. An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing.

However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements ***will not be granted*** unless good and sufficient grounds are shown ***and*** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(c).
- (2) Grounds thereafter must be set forth in ***detail***;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; ***and***
- (5) Copies must be simultaneously served on all parties (***listed below***), and that the fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of the hearing.

Joseph Anthony Turzi, Esq.
DLA Piper LLC (US)
500 8th St NW
Washington, DC 20004-2131

David A. Rosenfeld, Esq.
Weinberg, Roger & Rosenfeld
1001 Marina Village Pkwy, Ste 200
Alameda, CA 94501-6430

Phillip Mason
Fresh & Easy Neighborhood Market
2120 Park Pl., Ste 200
El Segundo, CA 90245-4741

United Food & Commercial Workers
International Union
3200 Inland Empire Blvd., Ste 160
Ontario, CA 91764-5575

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

FRESH & EASY NEIGHBORHOOD MARKET

and

UNITED FOOD & COMMERCIAL WORKERS
INTERNATIONAL UNION

Cases 31-CA-077074 and
31-CA-080734

AFFIDAVIT OF SERVICE OF: Order Consolidating Cases, Consolidated Complaint and
Notice of Hearing (with forms NLRB-4338 and NLRB-4668 attached).

I, the undersigned employee of the National Labor Relations Board, being duly sworn,
say that on October 23, 2012, I served the above-entitled document(s) by regular mail,
as noted below, upon the following persons, addressed to them at the following
addresses:

REGULAR MAIL

Joseph Anthony Turzi, Esq.
DLA Piper LLC (US)
500 8th St NW
Washington, DC 20004-2131

Phillip Mason
Fresh & Easy Neighborhood Market
2120 Park Place, Suite 200
El Segundo, CA 90245-4741

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Weinberg, Roger & Rosenfeld
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United Food & Commercial Workers
International Union
3200 Inland Empire Blvd., Suite 160
Ontario, CA 91764-5575

Argie Reporting
5900 Nieman Road, Ste. 200
Shawnee, KS 66203

October 23, 2012

Date

Mara Estudillo, Designated Agent of NLRB

Name



Signature

Re: FRESH & EASY NEIGHBORHOOD MARKET
Cases: 31-CA-077074 and 31-CA-080734

CERTIFICATE OF SERVICE

I hereby certify that I served the attached **COUNSEL FOR THE ACTING GENERAL COUNSEL'S OPPOSITION TO RESPONDENT'S MOTION TO DISMISS REVISED CONSOLIDATED COMPLAINT** on the parties listed below on the 14TH day of December, 2012:

SERVED VIA E-FILING

Lester A. Heltzer, Executive Secretary
Office of the Executive Secretary
National Labor Relations Board
www.nlr.gov

SERVED VIA E-MAIL

Joseph Anthony Turzi, Esq.
joseph.turzi@dlapiper.com

Collen Hanrahan
colleen.hanrahan@dlapiper.com

David A. Rosenfeld, Esq.
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Aide Carretero, Case Processing Assistant
National Labor Relations Board
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11150 West Olympic Blvd., Suite 700
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